

GARY L. BARTON
J. MARINELLI
R. NIXON

IBLA 79-601

Decided May 21, 1980

Appeal from decision of the Nevada State Office, Bureau of Land Management, declaring mining claims abandoned and void. NMC 6264 and NMC 6265.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Assessment Work
-- Mining Claims: Abandonment -- Mining Claims: Assessment Work

The owner of an unpatented mining claim located after Oct. 21, 1976, must file with the appropriate office of the Bureau of Land Management an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the calendar year following the date of location or the claim will be deemed conclusively to have been abandoned.

Where an appellant asserts on appeal that proof of labor was mailed timely to the Bureau of Land Management, but there exists no record of their receipt, the documents cannot be considered as filed.

APPEARANCES: Gary L. Barton, pro se, and for J. Marinelli and R. Nixon.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

The September 4, 1979, decision of the Nevada State Office, Bureau of Land Management (BLM), declared appellants' mining claims null and void for failure to file evidence of assessment work with BLM by December 31, 1978. The two unpatented mining claims, designated Musketeer 1 and 2 and identified by BLM serial numbers NMC 6264 and NMC 6265, were located on April 9, 1977, by appellants, Gary L. Barton, Joe Marinelli, and Robert Nixon.

Appellants argue that the required proof of 1978 assessment work was mailed on September 12, 1978, although the BLM serial number was omitted. Appellants note that the assessment work was done and now enclose with the appeal copies of the proofs of 1978 and 1979 assessment work.

[1] The owner of an unpatented mining claim located after October 21, 1976, shall prior to December 31 of each subsequent year, file with the BLM State Office evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2769, 43 U.S.C. § 1744(a) (1976); 43 CFR 3833.2-1(c). Since the claims were located in 1977, either evidence of assessment work or notice of intention to hold the claim had to be filed with BLM by December 31, 1978. Failure to file either document is deemed conclusively to constitute abandonment of the mining claim. 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a).

Although appellants assert that the required information was mailed to BLM, the record does not show that BLM received such proof. If the required proof was mailed and lost in transit, appellants must bear the consequences of nondelivery. John Newkirk, 42 IBLA 292 (1979); H. P. Saunders, Jr., 59 I.D. 41, 43 (1945). "A paper is filed when it is delivered to the proper official and by him received and filed." H. P. Saunders, Jr., *supra*, citing United States v. Lombardo, 241 U.S. 73, 76 (1916). Appellants admit that they failed to designate the BLM serial number. Regulation 43 CFR 3833.2-2(a)(1) specifies that the serial number be included in future filings, and where a claimant after notice from BLM has failed to furnish the number, we have ruled that there has not been compliance with the regulations. David V. Udy, 45 IBLA 387 (1980). If BLM has no proof that the required documents were filed as reflected by the records bearing the serial number for a claim and there is no proof that the documents were actually received, we must find that there was not a timely filing. Accordingly, since the required documents were not filed, BLM properly declared the claims void. William A. Berry, 44 IBLA 162 (1979); Al Sherman, 38 IBLA 300 (1978).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

I concur:

James L. Burski
Administrative Judge

ADMINISTRATIVE JUDGE GOSS CONCURRING:

I would hold that the claims must be declared abandoned and void under 43 U.S.C. § 1744(a)(2) (1976). Even if it could be presumed that appellants' mailing was received, the affidavit did not include "a description of the mining claim sufficient to locate the claimed lands on the ground." Id. Such a description is required unless there is included the serial number described in 43 CFR 3833.2-2.

Joseph W. Goss
Administrative Judge

